# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARK ESTBERG,

Plaintiff

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant.

No. 2:21-cv-00348-RSM

STIPULATED MOTION FOR LEAVE TO FILE "ADMINISTRATIVE RECORD" UNDER SEAL AND ORDER

**NOTED FOR JUNE 7, 2021** 

### I. Relief Requested

The parties respectfully move the Court, pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(g), to order that the "Administrative Record" in this matter – the defendant insurance company's claim file – be filed under seal, without redactions.

#### II. Relevant Facts and Legal Authority

This action arises under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq*. The parties agree the Court will need to consider Defendant's claim file to resolve the matter. Such files have come to be called the "Administrative Record" in ERISA

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benefit cases. Here, that voluminous file is primarily medical records and other documents addressing Plaintiff's medical conditions.

Although Local Civil Rule 5(g) establishes a strong presumption in favor of public access to court filings, the need to protect medical privacy qualifies as a "compelling reason" to allow records to be filed under seal. *Karpenski v. Am. Gen. Life Companies, LLC*, No. 2:12-CV-01569-RSM, 2013 WL 5588312 at \*1 (W.D. Wash. Oct. 9, 2013) (citing *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)). *See also Macon v. United Parcel Serv., Inc.*, 2013 WL 951013, at \*5 (W.D. Wash. Mar. 12, 2013) (granting unopposed motion to seal medical records given the "private nature of the documents at issue"); *Gary v. Unum Life Ins. Co. of Am.*, No. 3:17-CV-01414-HZ, 2018 WL 1811470, at \*3 (D. Or. Apr. 17, 2018) (granting an opposed motion to seal an ERISA claim file, citing numerous cases and stating "[t]he parties have not presented, and the Court is not aware of, any cases where medical information was not allowed to be filed under seal under the 'compelling reasons' standard.").

Local Civil Rule 5.2(c) states that "in an action for benefits under the Social Security Act" the "administrative record must be filed under seal" because those "actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings." *Id.* That reasoning applies to this action for ERISA disability benefits. Sensitive information concerning the Plaintiff is found throughout the claim file.

As certified below, the parties discussed whether redaction would be a suitable alternative. Due to the volume of the record, and the extensive redaction that would be necessary, the parties believe redaction is not a reasonable alternative. Federal Rule of Civil Procedure 5(d) provides that the "court may order that a filing be made under seal without redaction" and the parties respectfully move the Court to so order here.

## 1 III. Local Rule 5.2(g)(3)(A) Certification 2 The parties certify pursuant to Local Rule 5.2(g)(3)(A) that attorney Mel Crawford 3 representing Plaintiff and attorney Shelley Hebert representing Defendant exchanged emails and 4 drafts of the Joint Status Report addressing whether the record should be filed under seal, 5 without redactions. They conferred by telephone on June 4 and 7, 2021 to further address these 6 issues, and agreed redaction was not a reasonable means to protect Plaintiff's medical privacy, 7 8 because the documents would need to be so heavily redacted. 9 IV. Conclusion 10 The parties respectfully move the Court to order that the "Administrative Record" in this 11 matter be filed under seal, without redaction. 12 IT IS SO STIPULATED this 7th day of June 2021. 13 14 LAW OFFICE OF MEL CRAWFORD 15 16 By s/Mel Crawford Mel Crawford, WSBA # 22930 17 melcrawford@melcrawfordlaw.com 18 Attorney for Plaintiff 19 SEYFARTH SHAW LLP 20 By: s/Helen M. McFarland 21 Helen M. McFarland, WSBA #51012 22 hmcfarland@seyfarth.com Ian H. Morrison (admitted PHV) 23 imorrison@seyfarth.com Shelley Hebert (admitted PHV) 24 shebert@seyfarth.com Attorneys for Defendant 25 26 27

# **ORDER** IT IS SO ORDERED. The Court GRANTS the parties' stipulated motion and ORDERS that the administrative record in this action be filed and maintained under seal. Pursuant to Federal Rule of Civil Procedure 5(d), the record need not be redacted. DATED this 8<sup>th</sup> day of June, 2021. CHIEF UNITED STATES DISTRICT JUDGE